



Agenda Date: 2/10/12
Agenda Item: 6B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

RELIABILITY & SECURITY

IN THE MATTER OF CASTLTON)
ENVIRONMENTAL CONTRACTORS, LLC) ADMINISTRATIVE ORDER AND
) NOTICE OF CIVIL ADMINISTRATIVE
) PENALTY ASSESSMENT (AONOCAPA)
)
) DOCKET NO. EO12010084

Parties of Record:

William Jake Jacobsen, Castlton Environmental; Contractors, LLC
Keith R. Hemming, Esq., McElroy, Deutsch, Mulvaney & Carpenter, LLP.

BY THE BOARD:

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter "AONOCAPA") is issued pursuant to the authority vested in the New Jersey Board of Public Utilities (hereinafter "BPU" or "Board") by the Underground Facilities Protection Act, N.J.S.A. 48:2-73 et seq., Natural Gas Pipeline Safety Act of 1968 as amended, 49 U.S.C. 1671 et seq. and all regulations promulgated thereto and the Natural Gas Safety Act, N.J.S.A. 48:10-2, et seq. and all regulations promulgated thereto, including N.J.A.C. 14:7-2.5 and N.J.A.C. 14:2-6.4.

The Board has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("Act") N.J.S.A. 48:2-73 et seq. For violators of the Act involving natural gas facilities, the maximum penalties are \$100,000 per violation per day, with a total maximum of \$1,000,000 for a related series of violations. N.J.S.A. 48:2-86

This matter was opened to the Board of Public Utilities ("Board") following an investigation by the Board's Bureau of Underground Facilities Protection ("UFP") and Bureau of Pipeline Safety ("BPS") of a natural gas incident that occurred on April 9, 2010 at a single-family residence located at 64 Rutgers Place, Clifton, New Jersey.¹ The incident resulted in an explosion and fire that destroyed the residence. No persons were hurt inside the residence; however several fire fighters and Public Service Electric & Gas ("PSE&G") personnel were treated at the hospital.

¹ On February 10, 2012, the Board approved a settlement with PSE&G regarding this incident in In The Matter of Allegations of Violations of Pipeline Safety Regulations by Public Service Electric & Gas Company with Respect to a Gas Pipeline Incident in Clifton, New Jersey on April 9, 2010, Docket No. GO11110825.

The UFP and BPS conducted a detailed and comprehensive investigation which included a review of PSE&G (the underground facility operator of the affected natural gas service line) and Castlton Environmental Contractors, LLC (the Excavator) (hereinafter "Castlton" or "Respondent") procedures and documents, actions, and other circumstances surrounding the incident. Based on this investigation, it was determined that a build-up of natural gas inside the residence was the likely source of the explosion and fire, however, the source of the ignition could not be determined with certainty.

Pursuant to this investigation, the Board makes the following findings regarding the conduct of Castlton, the excavator present at the incident location on April 9, 2010.

FINDINGS

1. On February 1, 2010, Castlton requested a routine mark-out for a proposed underground oil tank excavation at 64 Rutgers Place, Clifton, New Jersey to remove an oil tank. The request was assigned mark-out ticket number 100320730, with an expiration date of April 8, 2010.
2. Public Service Electric & Gas ("PSE&G") performed a mark-out and a construction inspection. PSE&G located a gas service line in close proximity to the proposed excavation site. The gas service line constitutes an underground facility as defined in N.J.S.A. 48:2-75 and N.J.A.C. 14:2-1.2.
3. On February 9, 2010, Castlton performed an excavation, as defined by N.J.S.A. 48:2-75 and N.J.A.C. 14:2-1.2. This excavation involved the removal of an oil tank as well as other work performed related to the removal of the tank. A construction inspector from PSE&G was at the site during removal of the oil tank.
4. The PSE&G gas service line was exposed during the excavation.
5. During the course of the excavation and prior to backfilling, Castlton did not brace or support the exposed gas service line to the residence.
6. Following the excavation, Castlton identified a leak in the oil tank and performed routine environmental testing. Castlton back filled the site while awaiting the results of the environmental tests.
7. The PSE&G construction inspector advised Castlton personnel to contact PSE&G regarding any additional work Castlton would perform near the service line.
8. Thereafter, three additional mark-out requests for the same location were made by third parties. On February 10, 2010, PSE&G requested mark-out number 100410393; on February 15, 2010, EMC Soil Boring Inc. requested mark-out number 100460089; and on March 18, 2010, HPC Pest Control requested mark-out number 100771692.²

² Each person/entity performing excavation must separately request a mark-out. N.J.A.C. 14:2-3.1. As Castlton was not the excavator for these mark-out tickets, Castlton was not authorized to excavate pursuant to these mark-out requests.

9. On April 6, 2010 at 12:15, Respondent called for an Emergency Mark-Out at 64 Rutgers Place, Clifton, New Jersey for Soil Remediation. Markout ticket number 100961298 was issued.

10. The Act defines an emergency for purposes of a mark-out as:

any condition constituting a clear and present danger to life, health or property caused by the escape of any material or substance transported by means of an underground facility or the interruption of a vital communication or public service that requires immediate action to prevent or mitigate loss or potential loss of the communication or public service, or any condition on or affecting a transportation right-of-way or transportation facility that creates a risk to the public of potential injury or property damage

[N.J.S.A. 48:2-75]

11. The regulations promulgated pursuant to the Act define an emergency as:

1. Any condition constituting a clear and present danger to life, health or property caused by the escape of any material or substance transported by means of an underground facility, or by the interruption of a vital communication or public service that requires immediate action to prevent or mitigate loss or potential loss of the communication or public service; or
2. Any condition on or affecting a transportation right-of-way or transportation facility that creates a risk to the public of potential injury or property damage.

[N.J.A.C. 14:2-1.2]

12. At the time of the April 6, 2010 emergency mark-out request Castlton was not engaged in excavation nor did any excavation occur on April 6, 2010.

13. According to the records at the One Call Center, Castlton has repeatedly requested an emergency mark-out relating to post oil tank removal soil remediation.

14. The soil remediation described by Castlton in its records provided to the Board and in requesting the mark-out does not constitute an emergency under the Act. As no emergency existed, Respondent had no authority to excavate pursuant to emergency mark-out ticket 100961298.

15. Commencing on April 7, 2010 and continuing through April 9, 2010, Castlton engaged in soil remediation and removal of soil as well as backfilling relating to the prior removal of an oil tank on February 9, 2010 at 64 Rutgers Place, Clifton, New Jersey.

16. At no time did Castlton notify the PSE&G inspector of the ongoing excavation relating to the gas service line as requested by the PSE&G inspector following the February 9, 2010 excavation.

17. On April 7, 2010, Castlton's "Daily Worksheets" indicate that it "Excavate[d] contaminated soil and load into dump trucks."

18. On April 8, 2010, Castlton's "Daily Worksheets" indicate that it "Continue[d] excavating, load into dump trucks, and backfill back section. Set up for continue of removing contaminated soil Vacuum out excavation."
19. On April 8, 2010 Mark-Out Ticket Number: 100320730 expired. As of this date, Castlton no longer had a valid mark-out ticket under which it could excavate at.
20. On April 9, 2010, Castlton's records indicated that it "Stark (sic) backfilling excavation & remove additional contaminated soil."
21. On April 9, 2010 Castlton, was performing excavation/backfilling services at 64 Rutgers Place in Clifton, New Jersey.
22. During the course of the excavation on April 7, 8 and 9, Castlton did not brace or support the gas underground facility at the location, specifically, the PSE&G gas service line.
23. At approximately 12:40 AM, Castlton damaged the gas service line which resulted in a build-up of natural gas inside the residence. This damage occurred during the use of mechanized equipment within 2 feet of the underground facility.
24. Respondent's employees on site contacted respondent's office following the discovery of the gas service line damage. Respondent's office called PSE&G.
25. Respondent did not call 911 after damaging the pipe and smelling gas or at any time during the incident.
26. At approximately 1:30 PM there was an explosion and fire at the Clifton address.
27. No residents were inside the house at the time of the explosion; however, several responding firefighters and one PSE&G employee were taken to the hospital for minor injuries related to the response to the natural gas leak and explosion.
28. On Aril 21, 2010 a notice of an Alleged One-Call Violation for the April 09, 2010 event is sent to respondent.
29. On March 29, 2011 a Notice of Probable Violation and Offer of Settlement was sent to the Respondent for the above incident.
30. On May 18, 2011, Castlton filed an answering certification.
31. On July 27, 2011 an Amended Notice of Probable Violation and Offer of Settlement was sent to Respondent.
32. The Notice of Probable Violation and Amended Notice of Probable Violation remain unresolved and outstanding.

VIOLATIONS

The Board has reviewed the information gathered during the course of the investigation, including records regarding the applicable One Call Tickets, documents and photographs provided by Respondent and interviews conducted by Board Staff, and the Board HEREBY FINDS that Respondent has committed the following violations:

- a. **Violation:** N.J.A.C. 14:2-3.1
Excavator failed to have a valid Mark-Out at the time of excavation on April 9, 2010.
- b. **Violation:** N.J.A.C. 14:2-3.3(a)
Excavator failed to use reasonable care during excavation. This rule mandates that a party must not operate any mechanized equipment within two feet horizontally of the outside wall of any underground facility.
- c. **Violation:** N.J.A.C. 14:2-3.3 (b)
Excavator failed to provide adequate physical support of underground facilities on February 9, 2010
- d. **Violation:** N.J.A.C. 14:2-3.3 (b)
Excavator failed to provide adequate physical support of underground facilities on April 7 through 9, 2010
- e. **Violation:** N.J.A.C. 14:2-3.6
Excavator failed to call 911 immediately after causing damage
- f. **Violation:** N.J.A.C. 14:2-3.5 & 14:2-3.1(b)
Excavator requested an Emergency mark-out where no emergency exists
Ticket Void - No Emergency Exists

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT AND NOTICE OF RIGHT TO A HEARING

Pursuant to N.J.A.C. 14:7-2.5, and based upon the above FINDINGS, the Board HEREBY DETERMINES that a civil administrative penalty is HEREBY ASSESSED against Respondent in the amount of \$100,000.00. The Board's rationale for the civil administrative penalty is incorporated herein.

Respondent is HEREBY notified that pursuant to N.J.A.C. 14:7-2.6, respondent may request an adjudicatory hearing. If no hearing is requested within 20 days regarding this AONOCAPA, the penalty set forth will be due and owing on the 21st day following service of this AONOCAPA on the violator, without further notice. N.J.A.C. 14:7 -2.5(e)

If the Board grants the request for a hearing pursuant to N.J.A.C. 14:7-2.6, Respondent will be given an opportunity to respond to the charges and submit evidence and present testimony as may be necessary in order for the Board to make a final determination concerning the charges of unlawful activity.

If a hearing is requested but the Board denies the hearing request pursuant to N.J.A.C. 14:7-2.6, an AONOCAPA shall become a Final Order, and the penalty in the AONOCAPA shall become due and owing, upon service on the Respondent of notice of the hearing request denial.

If an adjudicatory hearing is requested and conducted, an AONOCAPA shall become a Final Order upon service on the Respondent of a Final Order in the contested case. N.J.A.C. 14:7-2.5 (g)

Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Joseph J. Potena, Chief Fiscal Officer
Board of Public Utilities
44 South Clinton Avenue
7th Floor, P.O. Box 350
Trenton, New Jersey 08635

GENERAL PROVISIONS

This AONOCAPA is binding on Respondent, its principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.

No obligations imposed by this AONOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and the environment.

This AONOCAPA is issued only for the violations identified in the FINDINGS herein above and violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, the Board does not waive its rights to initiate additional enforcement actions.

Neither the issuance of this AONOCAPA nor anything contained herein shall relieve the Respondent of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.

When requesting an Adjudicatory Hearing, Respondent must comply with N.J.A.C.14:7-2.6

- (a) To request an adjudicatory hearing to contest an AONOCAPA issued pursuant to this subchapter, the alleged violator shall submit the following information in writing to the

Secretary of the Board
Attention: Adjudicatory Hearing Request/Pipeline Safety
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
PO Box 350
Trenton, New Jersey 08625-0350

A copy of any request must also be sent via electronic mail to board.secretary@bpu.state.nj.us and Geoffrey.gersten@lps.state.nj.us.

1. The name, address and telephone number of the alleged violator and its authorized representative;
 2. The alleged violator's defenses, stated in short and plain terms, to each of the Board's preliminary findings of fact contained in the AONOCAPA;
 3. An admission or denial of each of the Board's preliminary findings of fact contained in the AONOCAPA. If the alleged violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the alleged violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the alleged violator intends, in good faith, to deny only a part of or qualify a finding, the alleged violator shall specify so much of it as true and material and deny only the remainder. The alleged violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding denied, the alleged violator shall allege the fact or facts as the alleged violator believes it or them to be;
 4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
 5. An estimate of the time required for the hearing (in days and/or hours); and
 6. A request, if necessary, for a barrier-free hearing location to accommodate physically disabled persons.
- (b) If the Board does not receive the hearing request within 20 days after service on the violator of the AONOCAPA being challenged, the Board shall deny the hearing request.
- (c) If the Respondent fails to include all the information required by (a) above or if upon review of the submission, the Board determines that there is no dispute of material facts, the Board may deny the hearing request.
- (d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rule, N.J.A.C. 1:1

PENALTY CALCULATION

1. N.J.S.A. 48:2-86 (c) holds, a person who is determined by the board, after notice and opportunity to be heard, to have violated any provision of P.L.1994, c.118 or any rule, regulation, or order adopted pursuant thereto with respect to a natural gas underground pipeline or distribution facility, or a hazardous liquid underground pipeline or distribution facility, shall be liable to a civil penalty not to exceed \$ 100,000 for each violation for each day the violation continues, except that the maximum civil penalty may not exceed \$ 1,000,000 for any related series of violations.

Pursuant to the above Findings and the determination that Respondent has engaged in numerous violations of the One Call Act and Regulations, the Board is assessing a penalty of

\$100,000 for the series of violations leading to the April 9, 2010 incident. The Board recognizes that a higher penalty could be imposed for the above series of violations, but having considered the statutory factors set forth at N.J.S.A. 48:2-86, the Board has determined that a \$100,000 penalty is appropriate.

Now, therefore, it is **HEREBY ORDERED** that Respondents shall comply with the following:

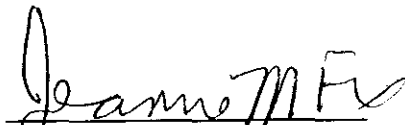
- a. Cease and desist from violating the provisions of N.J.S.A. 48:2-73 et seq. and N.J.A.C. 14:2-1.1 et seq. as set forth above; and
- b. Pay a penalty in the amount of \$100,000.00.

The Board **HEREBY ORDERS** an AONOCAPA be served on Clifton Environmental Contractors, LLC. in accordance with the Administrative procedure rules at N.J.A.C. 1:1-7.2 for the violations that occurred leading up to the April 9, 2010 explosion at 64 Rutgers Place in Clifton, New Jersey.

DATED: 2/10/12

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

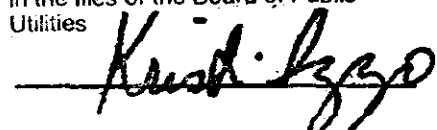

NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF WILLIAM JAKE JACOBSON, CASTLTON ENVIRONMENTAL
CONTRACTORAS, LLC. AN ADMINISTRATIVE ORDER AND NOTICE OF CIVIL
ADMINISTRATIVE PENALTY ASSESSMENT (AONOCAPA)
DOCKET NO. EO12010003

SERVICE LIST

Parties of Record

**William Jacobsen
Castlton Environmental Contractors, LLC.
80 W. Nyack Rd.
Nanuet, NY 10954**

**Keith R. Hemming Esq.
McElroy, Deutsch, Mulvaney & Carpenter, LLP
Three Gateway Center
100 Mulberry Street
Newark NJ 07102-4079**

Board Staff

**James Giuliano, Director
Division of Reliability & Security
Board of Public Utilities
44 South Clinton Avenue
Trenton NJ 08625**

**James P Kane Esq.
Counsel's Office
Board of Public Utilities
44 South Clinton Avenue
Trenton NJ 08625**

Deputy Attorney General

**Geoffrey Gersten, DAG
Division of Law
124 Halsey Street 5th floor
Newark NJ 07102**